

E N D O R S E M E N T

GOLDEN et al. v. COUNTY OF SUFFOLK
04-CV-10835-MEL

LASKER, D.J.

Defendant moves to dismiss the segment of Count I dealing with the specific issue of negligent failure to instruct. The motion is DENIED.


Plaintiffs claim that the County of Suffolk ("County") was negligent for failing to protect those in its custody against unreasonable risk of physical harm. Restatement (Second) of Torts § 314A (1965); see Slaven v. Salem, 386 Mass. 885 (1982). The County argues that it had no duty to warn of open and obvious dangers. See Barnett v. City of Lynn, 433 Mass. 662 (2001); O'Sullivan v. Shaw, 431 Mass. 201 (2000); Greenslade v. Mohawk Park, Inc., 59 Mass. App. Ct. 850 (2003).

The County's arguments are unpersuasive. Contrary to the cases cited by Defendant, this case concerns a duty to instruct Plaintiffs on a method of avoiding an obvious danger, not simply to warn them of its presence. Furthermore, the plaintiffs in the cases cited by the Country were not required to engage in the dangerous activity as a result of restrictions placed on them by the defendants, which is the situation in the case at bar.

The complaint has sufficiently alleged the elements of negligence on this matter. Accordingly, the motion to dismiss on the issue of negligent failure to instruct is DENIED.

It is so ordered.

Dated: June 29, 2005
Boston, Massachusetts


/s/ Morris E. Lasker
U.S.D.J.